

# Natural Moral Law and Canon Law

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## FIRST PART

One of the moral problems in our post-modern day's legislation is the tendency to consider the jurisprudence as a close legal system where other gratuitous and nongratuitous elements may come *ad extra* either to perfect or to make the system more effective. It tends to be more rigid when external elements threaten the very foundation and application of the positive law. This is why it chooses from among the external influences only those that it considers essential to ensure its security and effectiveness without giving a second thought on discarding the primary and permanent principles that can make the norms *erga omnes*, i.e., valid for all peoples at all times. For this reason, the jurisprudence tends to eradicate the moral dimension in its discipline. The moral principles are relocated to the sphere of mere private issue because they deal more of personal/subjective moral sentiments and question of conscience; while the positive law is confined to mere formal legal enactments of an evolved society. This inevitably has a negative impact on the correct understanding of the natural law *seu* natural moral law.<sup>1</sup>

Eventually, the natural law is considered as something that deals with subjective principles of nature, thereby excluding the

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<sup>1</sup> F. Favara, *De iure naturali in doctrina Pii Papae XII* (Roma 1966) 152: "*Ius naturale et lex moralis ad mentem Summi Pontificis habent eandem originem, eandem vim, easdem qualitates, eosdem effectus, eadem nomina.*"

core of the natural law itself, i.e., the objective principles of the very nature of man.

In order to understand the crisis and the present issues concerning natural moral law, it is necessary to go over the evolution of the concept of natural law;<sup>2</sup> if not a comprehensive evaluation, at least a review of its most salient points as handed to us by works and scholarly writings of generation of great thinkers and jurists.

## 1. Natural Moral Law in the Ancient World

The origins of natural law lie in the speculative reflection of the philosophers and jurists of the ancient world. It is generally accepted that the notion of natural law does not have scriptural derivation and therefore cannot be considered a product of the science of the revealed Truth. The evolution of the concept of natural law belongs to the universal heritage of human wisdom and has been “purified and brought to its fullness through the light of Revelation”.<sup>3</sup>

The primeval thinkers were convinced that there were rules for human behavior based upon objective and eternal norms. They conceived of these norms as having been established by nature and human reason. Heraclitus (c.535 BC – 475 BC), like Parmenides (c.515 BC), postulated a model of nature and the universe which created the foundation for all other speculation on physics and metaphysics. The ideas that the universe is in constant change<sup>4</sup> and that there is an underlying *order* or *reason* for such a change

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<sup>2</sup> Recommended readings: E. Ahrens, *Corso di Diritto naturale o di Filosofia del diritto*, (Napoli 1855); R. Paniker, *El concepto de naturaleza. Análisis histórico y metafísico de un concepto* (Madrid 1951); H. Rommen, *L'eterno ritorno del diritto naturale* (Roma 1959); D. Composta, *Natura e ragione* (Zurigo 1971); J. Maritain, *I diritti dell'uomo e la legge naturale* (Milano 1977); R. Pizzorni, *Il diritto naturale dalle origini a S. Tommaso d'Aquino* (Roma 1985).

<sup>3</sup> John Paul II, *Allocutio, Discorso di Giovanni Paolo II alla Plenaria della Congregazione per la Dottrina della Fede*, Friday, January 18, 2002, in: [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/2002/january/documents/hf\\_jp-ii\\_spe\\_20020118\\_dottrina-fede\\_it.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/2002/january/documents/hf_jp-ii_spe_20020118_dottrina-fede_it.html).

<sup>4</sup> Fragment 12: “On those who step in the same river, different and different waters flow.”

challenged the philosopher to seek explanation. The true wisdom for Heraclitus implies a proper understanding on how the nature works and how all things are governed.<sup>5</sup> For the Greek pre-socratic philosopher, the world is governed by the *Logos*.

"It is necessary for those who speak sensibly to rely on what is common to all, just as a city must rely on its law, but even more so; all human laws are nourished by a single divine law – *Logos* – ; for it rules as far as it wishes and is sufficient for all and is still left over."<sup>6</sup>

The highest wisdom man can achieve is to comprehend and obey, in words and actions, to the nature, i.e., the *Logos* (the divine law) insofar as it is a universal reason that governs all things under the sun. This belief, from Heraclitus to Sofocles,<sup>7</sup> presents the concept of human law dependent on divine law.

Aristotle in his *Nicomachian Ethics*, introduced the concept of natural law, i.e., what is just *by nature* (*fýsei díkaion* or δίκαιον φυσικόν) and positive law, i.e., what is just *by convention* (*nómō díkaion* or δίκαιον νομικόν). Both encompass the dimension between divine immutability (the natural law from God) and human mutability<sup>8</sup> (the positive law from the legislator). For the father of natural law,<sup>9</sup> natural justice springs forth from the political justice, where distributive and corrective justice are upheld thereby establishing a just and political society; if this justice were to take the form of precept, this could be called a natural law.

Aristotle's conviction of the existence of natural law is manifested in "Rhetoric" where the Greek philosopher affirmed that, aside from the positive particular law that each people has established for the regulation of its social and political life, there

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<sup>5</sup> Fragment 41: "Wisdom is one thing: to understand with true judgment how all things are steered through all."

<sup>6</sup> Fragment 44.

<sup>7</sup> Cf. *Antigone*, verses 450-470.

<sup>8</sup> Cf. *Nicomachian Ethics*, 1134-1135.

<sup>9</sup> As some scholars consider Aristotle, cf. SHELLENS, Max Salomon, "Aristotle on Natural Law," in: *Natural Law Forum*, 4 (1959), 72-100.

is a common law that is in accord with nature,<sup>10</sup> and that is the natural law.

Stoicism provided the most complete classical formulation of natural law. The Stoics argued that the universe is governed by reason, or rational principle; they further argued that all men have reason within them and can therefore know and obey its law. Because human beings have the faculty of choice, i.e., a free will, they will not necessarily obey the law; if they act in accordance with reason, however, they will be "following nature".

Cicero (†43 BC), molded from Stoic's school of thought, developed a concept of natural law whose major characteristics were its universality and rationality. The Roman orator affirms that

"true law is right reason in agreement with Nature... it is of universal application, unchanging and everlasting... we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and for all times, and there will be one master and one ruler, that is, God, over us all, for He is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst penalties, even if he escapes what is commonly considered punishment."<sup>11</sup>

The essence of the law, in Cicero's thought,<sup>12</sup> is the right reason contained in the nature itself. In this context, natural law

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<sup>10</sup> *Rhetoric* 1373b2-8.

<sup>11</sup> Cicero, *De Re Publica*, trans. Clinton Walker Keyes (Cambridge, MA: Harvard University, 1928), III, xxii.33.

<sup>12</sup> Cf. Russell Kirk, *The Roots of American Order*, 3rd ed. (Washington, D.C.: Regnery Gateway, 1991), pp. 109-11 (quoting from Cicero, *De Legibus*, trans. Clinton Walker Keyes [Cambridge, MA: Harvard University, 1928], I, vi.18-19). The author clearly and succinctly summarizes Cicero's concept of natural law: "Human laws are only copies of eternal laws. Those eternal laws are peculiar to man, for only man, on earth, is a rational being. The test of validity for the state's laws is their conformity to reason.... Learned men know that Law is the highest reason, implanted in Nature, which commands what ought to be done and forbids

explicates the basis of our moral choice and enforces our ability to have a sound reason. The natural law thanks to the Cicero and Stoic's reflections acquired a greater force becoming universal law of nature that surpasses personal and particular law because it governs the entire universe. Consequently, every man in order to be realized has to be faithful to his own rational nature and to conform himself to the principles set by the very same law.

## 2. Natural Law in Roman Legal Tradition and Justinian's Compilations

### *Roman Thought and Legal Tradition*

The Romans of monarchic period, after more than two centuries of the founding of the city, *ab urbe condita*, lived by customary law. Handed down through generations, this law was considered by the Romans to be a legal tradition that evolved from its earliest days. This customary law that formed part of the system called *ius civile* was applied only to the citizens of the city (*cives romani*).

The centuries-old customary law was then written down for the first time by a commission of ten consuls, *Decemvirate*, in 451 BC. The product of the compilation is the Law of the Twelve Tables (449 BC) that embodied not only civil but also public and religious laws. The *Lex Duodecim Tabularum* became not only the foundation of Roman law but also the nucleus of the constitution of the Roman Republic. The Code did not rewrite existing law or create new law. Rather, it simply transferred established customary law (*ius*) to a written form (*lex*). Neither the compilation transcribed all existing law to written form. Instead, it focused on specific questions that might lead to dispute or disagreement, and it addressed the technical aspects of legal procedure, so that a citizen had a guide to the proper ways of pursuing legal justice.

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the opposite. This reason, when firmly fixed and fully developed in the human mind, is Law. And so they believe that Law is intelligence, whose natural function it is to command right conduct and forbid wrongdoing. Now if this is correct, [...] then the origin of Justice is to be found in Law; for Law is a natural force; it is the mind and reason of the intelligent man, the standard by which Justice and Injustice are measured. Law, then, at base is knowledge of the ethical norms for the human being."

The passage from republican to imperial Rome entailed an enormous and increasing responsibility in governance. Moreover, the diversity of population of the empire inevitably demanded a more systematic administration of justice. Legal questions and disputes inevitably arose due to growing economic and commercial interactions not only among *cives romani* but especially with the strangers (*peregrini*) living in or traveling through its territories and to whom the *ius civile* could not apply.<sup>13</sup> There was a need to have a systematic legal approach applicable to all peoples and this necessity led to the formation of the multifaceted norms that regulated the rapport among Romans and non-Romans. This newly formed body of “natural reason for all peoples, all nations and all men”<sup>14</sup> is commonly known as *ius gentium*.

The *ius gentium*, or law of nations, was based upon the general principles and reasoning that civilized societies and men were understood to live by and observe. Since the *ius gentium* contained legal provisions based on natural reason (*naturalis ratio*) and are generally recognized by all peoples to be rooted in natural human relationship, it became known also as *ius naturale*.

It was the Roman jurist Gaius who made the bipartition of law in *ius civile* and *ius gentium* and considered the latter as *ius naturale*.<sup>15</sup> He emphasized the value of natural reason that established the same principles among men and are observed by all peoples in all places. It is a form of *ratio naturalis* that ought to be obeyed because it is inherent in the human rationality. Thus,

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<sup>13</sup> A foreigner cannot have recourse to *ius civile* in accordance with the Roman principle of “personality of law”. In order to satisfy any legal demand by a non-*civis romanum*, a special magistrate is appointed to preside in the legal procedures involving subjects who do not have Roman citizenship. The “*praetor peregrinus*” used to elaborate norms directed to resolving legal conflicts among strangers.

<sup>14</sup> “*Omnes populi, omnes gentes, omnes homines et naturalis ratio*” was the usual formula used in referring to *ius gentium*.

<sup>15</sup> Gaius, *Institutiones*, I, 1: “*Quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos paraque custoditur, vocaturque ius Gentium, quasi quo iure omnes gentes utuntur.*”

the concept of *ius gentium* based on natural law was developed and it became a recognizable law to all peoples.

*Ius gentium* and *ius naturale* are generally considered the same for the universality of their content.<sup>16</sup> However, *ius gentium* differs from *ius naturale* on dealing with the institution of slavery. While the former admitted its possibility, the latter was clear in affirming that all persons are born free and equal.<sup>17</sup>

Beginning in the 3rd century, the Roman jurists began to differentiate the two systems of law. Justinian recognized the autonomy of *ius naturale*. However, it should be noted that there were no contradictions in the tripartite system: *ius naturale*, *ius civile* and *ius gentium* because all of them are inspired and derived from the natural reason and the reason cannot be different anywhere, "*non enim alia causa est aequitas... non alia ratio iuris*".<sup>18</sup>

Analyzing the development of the Roman concept of natural law, it is easy to recognize the influence of the Greek religious and philosophical thought. The mystical concept of law corresponds with the pursuit of the virtue of justice. The formation of law that will govern the religious and political life of the peoples should take into consideration three essential principles. The first principle is the "divine will" as the basis of written and non-written law; the "human will" that complies to the precept of law through natural reason is the second principle, and the "nature of things" on which every law should be founded is the third element. These principles are absorbed in the legal doctrines and practical life of the Romans. It is obvious that Philosophers and statesmen during this period repeated and re-elaborated this Stoic's reflections on *ius naturale* connecting it to the natural inclination of man to understand and live the principles underlying its concept.

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<sup>16</sup> The authors of the Institutes generally agreed that *ius gentium* and *ius naturale* are identical, cf. *Institutiones* 2.1.11.

<sup>17</sup> Cf. *Digesta* 50, 17, 32: "*Quod attinet ad ius civile, servi pro nullis habentur: non tamen et iure naturali, quia, quod ad ius naturale attinet, omnes homines aequales sunt.*"

<sup>18</sup> PIZZORNI, R. M., *Il Diritto naturale dalle origini a S. Tommaso d'Aquino*, 1973, 43.

### ***Justinian's Compilation***

The Emperor Justinian's *Corpus Iuris Civilis*<sup>19</sup> is a comprehensive codification of the Roman *iura* (rights) and *leges* (laws) based on all existing imperial constitutions and their legal principles. It is a vast collection of harmonious correlation of all the sources and the materials of legislative production of the Roman law.

The term *ius naturale* is mentioned twenty times in *Digesta* and four times in the *Institutiones* of Gaius. The Roman jurists of the classical period considered the *ius naturale* as a body of law known to all peoples and founded on *ratio naturalis*.

In the first title of the first book of *Digesta* under the subtitle "*De iustitia et iure*", Ulpian defined natural law as what "nature

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<sup>19</sup> The Justinian's *Corpus Iuris Civilis*, is considered to be the most complete compilation of the Roman law and the indispensable document of all modern civil law especially in Europe. Emperor Justinian I (527-565) on December 15, 530 AD commissioned a college of jurists presided over by the eminent jurist Tribonian to arrange systematically and orderly the more than 1,000 years of legal development of Roman law. The product was more comprehensive, systematic, and thorough than any previous work of that nature, surpassing in excellence even the Theodosian Code. The four parts of the compilation are the Institutes (*Institutiones*), an introductory textbook, published on November 21, 533 AD, for the study of law in substitution to the *Institutiones* of Gaius; the Digest (*Digesta seu Pandectae*), published December 16, 533 AD, it is so far the most important collection of the authoritative dictum of the most famous classical jurists viz., Gaius, Paulus, Ulpian, Modestinus, and Papinian; the Code (*Codex Iustinianus*), a collection of imperial constitutions or law that was published on April 7, 529 AD; and the Novels (*Novellae*), a private collections of imperial legislation issued after the promulgation of the three compilations, between 535 and 565 but never officially collected. In the 11th century, with the revival of interest in Roman law in the School of Bologna, the *Corpus Iuris Civilis* was studied and commented on exhaustively beginning with Irnerius. Jurists and scholars trained in the scuola bolognese played a leading role in the creation of national legal systems throughout Europe, and the *Corpus Iuris Civilis* thus became the ultimate model and inspiration for the legal system of virtually every continental European nation. See also: H.F. Jolowicz, *Historical Introduction to the Study of Roman Law* (2d ed. 1952); Roman Foundations of Modern Law (1957); A.T. Von Mehren, *The Civil Law System* (1957). The provisions of the *Corpus Iuris Civilis* also influenced the Canon Law of the Church since it was said that *ecclesia vivit lege romana* – the church lives under Roman law, cf. *Lex Ripuaria*, tit. 58, c. 1: "*Episcopus archidiaconum jubeat, ut ei tabulas secundum legem romanam, qua ecclesia vivit, scribere faciat*".



teaches all animals," including human beings.<sup>20</sup> He distinguished natural law from the *ius gentium* that was common only to human beings and established by their customary usages. He defined *ius naturale* as a composite of the precepts of cohabitation (living together) dictated by the nature to all living beings. He cited marriage and the procreation of children as examples of natural law.

While classical jurists underlined that the norms of natural law were derived from the *naturalis ratio*, the post-classical jurists, upheld a transcendental vision, i.e., there were unchangeable and eternal norms constituted by divine providence. In fact, the concept of natural law in the *Institutiones* moved the source of natural law from the behavior of creatures to God: "Natural laws are established by divine providence and always remain firm and immutable."<sup>21</sup>

In Justinian concept, natural law has divine foundation because the law of nature – eternal and unchangeable – is a supreme reason emanating from God's mind; it is universal and eternal as universal and eternal is the divine justice. Since *ius naturale* is considered "*semper aequum ac bonum est*" (*it is always just and right*), consequently, it is placed in the rank of divine law.

Likewise, the Roman jurist, Paulus (200 AD), affirmed that a provision enacted in accord with the criteria of justice is considered to be in conformity with the *ius naturale*. Thus, a precept of natural law is always *iustum* and *bonum*,<sup>22</sup> unchangeable insofar as it represents an eternal value.

The common belief among the jurist of the classical and postclassical periods of Roman law is that human person as rational and social being should be considered as supreme principle of nature on which every positive law should be founded. The *ratio* that is inherent to every rational being constitutes the

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<sup>20</sup> Cf. *Digestum*, 1, 1, 1, 3: "*Ius naturale est, quod natura omnia animalia docuit. Nam ius istud non humani generis proprium, sed omnium animalium, quae in terra, quae in mari nascuntur, avium quoque commune est.*"

<sup>21</sup> *Institutiones* 1.2.11.

<sup>22</sup> *Digestum*, 1, 1, 1: "*Ius est ars boni et aequi.*"

natural light<sup>23</sup> through which one can comprehend the nature of things and of man. Therefore, the essence of *ius naturale* should be sought by investigating the very nature of man and of created things.

The *ius naturale*, a non written law, known in the ancient jurisprudence for its humanity and geniality served as the basis for the creation of the Roman system of law and its legal institutions. In its development and evolution, the fundamentals of *ius vetum* and *ius novum* correspond essentially to the principles of natural law, *viz.*, universality, immutability and rationality. The rules dictated by natural reason are always the same, but the form of their expression changes from time to time and from one place to another and it usually depends on political, cultural and religious factors.

From the Middle Ages down to the rise of a new School of Natural law after the 15th century, there was a conviction that Natural law contains and included the whole of *Ius Romanum*. This is because Roman Law as a whole is considered both as supremely reasonable and universally diffused making the legal system and its institutions embodiment of natural law.

### 3. Natural Law in the Middle Ages

The Fathers of the Church, from the 2nd to the 7th century, never expounded the concept of natural law simply because their primary concern was to establish, defend and confirm the faith and the official doctrine of the Church. The first Christian philosopher to write on natural law was Isidore of Seville (560-636), the last of the ancient Christian Philosophers. In his "*Etymologiae*" or "Origines" as it is sometimes called, the last of the great Latin Fathers combined the Hellenistic and Roman traditions defining *ius naturale* as being the law observed by all peoples. This law that is common to all nations is established by the natural instinct and not by positive law. The author describes natural law and gives some examples of objective rights deriving from the law of nature.

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<sup>23</sup> *Tusculanae*, III, 1, 2; Cf. R. Pizzorni, *Diritto, etica e religione* (Roma 2006) 316: "*La legge naturale, quindi, è più lumen, cioè capacità di scoperta della legge eterna, che la somma dei singoli precetti scoperti una volta per sempre.*"

"Ius naturale is the law common to all people, in that it is everywhere held by instinct of nature, not by any enactment: as for instance, the union of man and woman, the generation and rearing of children, the common possession of things and the one liberty of all, the acquisition of those things which are taken from air and land and sea; also the return of a thing deposited or money loaned, the repulsion of force by force."<sup>24</sup>

After Isidore's *excursus* on natural law in the early middle ages, it is interesting to note that very few attempted to give further details about the theory until the high middle ages. In fact, Isidore's concept of *ius naturale* will be re-elaborated by the founder of the science of the Canon Law in the *Scuola Bolognese*, Joannes Gratian.<sup>25</sup>

The reordering of the confused mass of ecclesiastical law that had accumulated over many centuries in Gratian's "*Concordantia discordantium canonum*" is one of the greatest legal works of all times.<sup>26</sup> The *monaco camaldolese* monk made this first comprehensive and systematic legal treatise in the history of western legal world, otherwise known as the "*Decretum Gratiani*" or simply *Decretum*.

Gratian began his treatise by discussing the different kinds of law that governed and directed the behavior of men. He based

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<sup>24</sup> Dist. 1 c.7.

<sup>25</sup> Cf. A. Stickler, *Historia Juris Canonici Latini, Historia Fontium – Pars I* (Roma 1950) 202.

<sup>26</sup> For a more comprehensive study of *Concordantia discordantium Canonum*, see: A. Stickler, *Historia Juris Canonici Latini, Historia Fontium – Pars I* (Roma 1950); F. Laurin, *Introductio in Corpus Iuris Canonici* (Friburg 1889); S. Kuttner, *New Studies on the Roman Law in Gratian's Decretum*, in *Seminar* 11 (1953) 12-50; Id., *De Gratiani opera noviter edendo*, in *Apollinaris* 21 (1948) 118-128; Id., *Gratian and the Schools of Law* (London 1983); Id., *Report on Eight Centenary of the Decree of Gratian*, in *The Jurist* 12 (1952) 396ff; W. Ullmann, *The Paleae in Cambridge manuscripts of the Decretum*, in *Studia Gratiana* 1 (1953) 161ff; J. Rambaud-Buhot, *Plan et méthode de travail pour la redaction d'un catalogue des manuscrits du Décret de Gratien conservés en France*, in *Studia Gratiana*, 1 (1953) 121ff; J. Erickson, *The Collectio in Three Books and Gratian's Decretum*, in *Bulletin of Medieval Canon Law*, 2 (1972) 67ff; G. Falchi, *Fragmenta Iuris Romani Canonici* (Roma 1998) especially 183-285.

the whole structure of jurisprudence on an initial distinction between *ius naturale* and customary law. This led natural law to the forefront of all possible argument concerning positive law.

*"Humanum genus duobus regitur, naturale videlicet iure et moribus. Ius naturale est, quod in lege et Evangelio continetur: quo quisque iubetur alii facere quod sibi vult fieri et prohibetur alii inferre quod sibi noli fieri."*<sup>27</sup>

Gratian used Isidore's definition of natural law in defining its content<sup>28</sup> but he connected it to the Gospel's golden rule.<sup>29</sup> With the obligation to treat human beings with care and dignity on one hand and the administration of justice and equity on the other, Gratian intended to set the foundation of an ideal legal system on natural law.

However, Gratian's definition of natural law presented some apparent difficulties for the medieval jurists and theologians. There are many reasons for such incongruity. First, Isidore's text did not contain the Gospel Rule that constituted the essence of morality in the natural law as understood by Gratian himself. Second, the natural law conceived by Isidoro was not a precept taken from the Bible but a product of human instinct. Moreover, the influence and inclusion of some texts of Roman law taken from *Corpus Iuris Civilis* increased incoherence in Gratian's thought and language.

The result was that the *civilista*, *canonista* and *decretista* found several concepts of natural law in their sources with many contradictions. Those concepts differ from one perspective to another.<sup>30</sup> As a matter of fact, *ius naturale* could be considered

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<sup>27</sup> Dist. 1, *dictum ante* c.1: "Mankind is ruled by two laws, namely natural and customary laws. Natural law is that which is contained in the Law and the Gospel by which one is commanded to do unto another what he wants other to do unto him and to avoid (prohibit) to do to another what he does not want another to do unto him."

<sup>28</sup> *Decretum* 1 c.7.

<sup>29</sup> Mt. 7:12.

<sup>30</sup> TRIERNEY, B., *The Idea of Natural Rights*, Cambridge, UK, 1997, 59: "Already by 1160 Stephanus had found five meanings for *ius naturale* and, a little later, an English canonist gave nine, ranging from «the order and instinct

only as an instinctual behavior of all God's creatures<sup>31</sup> or the set of behavioral norms that governed primitive human beings long before evolved human societies enacted their positive law. It could have been a harmony of justice and equity brought about by common sense found in *ius humanum* and thus, found in *ius gentium*. It could also have been a product of knowledge stemming from *naturalis ratio* or divine law (where "divine" is vaguely understood). An honest analysis of the work of Gratian will surely help to unveil the real concept of natural law according to the father of the science of canon law. This will be our approach in the second part of this study.

The concept of a natural law based on human reason and simultaneously somewhat divine, was shared by Peter Abelard. He considered natural law as pre-dating the Mosaic law and he emphasized its connection with the *naturalis ratio*. He adopted Cicerone's distinction of *ius naturale* and *ius positivum* but failed like his contemporaries to distinguish natural law from the divine revealed law.<sup>32</sup>

Peter Lombard (c.1100-1160) was in harmony with the view of the school of Anselm of Laon. Both believed in the Golden rule and that the "precept of the natural law because of man's neglect, had to be reiterated in the Decalogue."<sup>33</sup>

William of Auxerre (1220) in his *Summa aurea* elaborated a wider and narrow concept of natural law. He considered Ulpian's definition of natural law as the wider concept while, in the strict sense, natural law is that which connects with the natural reason that is intuitive. He considered natural law, in the widest sense, as synonymous to the harmony of creation because it is the source and principle of all virtue.<sup>34</sup>

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of nature» to an impenetrable metaphysical definition. Others have said that natural *ius* is an extrapredicamental something including both the mode of existing as essence and as being."

<sup>31</sup> Ulpian's definition of natural law, *quod nature omnia animalia docuit*.

<sup>32</sup> *Dialogus inter philosophum Judaeum et Christianum*, in: P.L., 178; 1656. Cf. F. De Siano, *Of God and Man: Consequence of Abelard's Ethics*, in: *The Thomist*, 35 (1971) 639, 652-654.

<sup>33</sup> Petrus Lombardus, *Liber Sententiarum*, III, D. 37, in: P.L., 192; 832.

<sup>34</sup> Cf. O. Lottin, *Psychologie et morale aux XII et XIII siecles*, II, 75-76.

Roland of Cremona, the first Dominican professor at Paris (1229-1230), affirmed that inclination towards good in all creatures was a generic natural law. He made an important distinction on the precepts of natural law into primary that are immutable and secondary that is variable. But generally, the precepts of natural law are unchangeable because according to Alexander of Hales (1248), natural law is said to derive from the eternal law.<sup>35</sup>

Albert the Great (1206-1280) differed from many *decretalists* during his time. He considered absurd the concept of natural law common to all animate and inanimate creatures. He pointed out that natural law and natural justice belong to the specific nature of man, *viz.*, reason, and not to nature in general. Thus, *ius naturale* in its proper sense pertains to man alone. In all his arguments, what usually prevailed is the affirmation that natural law refers formally to the rational nature of man.

#### 4. *Lex Naturalis* and *Ius Naturale* in St. Thomas Aquinas

The medieval traditions on natural law were transmitted to the modern world primarily through the works of Christian philosophers and theologians, especially St. Thomas Aquinas (1225-1274). The Angelic Doctor treated natural law expansively in his *Summa Theologica* in Book One, part two, questions 91 and 94.

St. Thomas of Aquinas began his reflection on natural law having in mind the Christian concept of man, created by God in His image and likeness and is a part of the created world wherein he pursues a goal proper to his nature in harmony with the universe. In order to realize the end for which man is created, God is the external principle that helps him achieve what is good; he is guided with instructions and assisted by grace. The natural law, for the Angelic Doctor, "is no other than the participation of the rational creature to the eternal law of God."<sup>36</sup> The eternal law, as

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<sup>35</sup> *Summa fratris Alexandri*, lib. III, pars 2, Inquis. 1, c. 7, a. 4 (Quaracchi t. 4, n. 223, 328-329): "*Dicendum quod omnis lex naturalis est a lege aeterna, tamen secundum propinquius et remotius, secundum quod naturae, in quibus et, se habent secundum propinquius et remotius ad Deum.*"

<sup>36</sup> St. Thomas Aquinas, *Summa Theologiae*, I-II, q. 91, a. 2: "*Lex naturalis nihil aliud est quam participatio legis aeternae in rationali creatura.*"

affirmed by tradition, is the foundation of every law. God's infinite wisdom governs and directs all things to their proper end. The creatures participate in the eternal law according to their nature. The rational beings partake of the law through their rationality and freedom. In abiding to the precepts of the moral law, the reason (*ratio*) knows what is convenient to the nature of rational being and is led to achievement of its end. In fact, St. Thomas, explains that,

"the rational creature, in an excellent way, is subject to the divine providence, insofar as it becomes part of the providence, providing for itself and for others: thus, it has in itself the participation of the eternal reason, through which it has a natural inclination to the act and end; such participation of the eternal law in rational creatures is called natural law."<sup>37</sup>

For St. Thomas, the *lex naturalis* is the light of the intelligence infused by God, through which man can know what he ought to do and what he must avoid.<sup>38</sup> This kind of law comes from God and yet it is a part of the essential constitution of man because it is his very own law (*lex indita*) and it is not a command that comes *ad extra* but "from within".<sup>39</sup> As a consequence, man becomes the principle of his own acts in as much as he possesses the capacity to define the moral principles of his behavior.<sup>40</sup>

The concept of *lex naturalis* is connected to the natural right whose norm is the *ratio*. In this context, the *law* is the rule and the *right* is its objective content. Practically it is the *right by nature* (*iustum ex natura*), in other words, right is what is due to man

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<sup>37</sup> St. Thomas Aquinas, *Summa Theologiae*, I-II, q. 91, a. 1.

<sup>38</sup> Cf. R. Pizzorni, *Diritto, etica e religione* (Roma 2006) 317: "*La ragione umana conosce così ciò che è bene e ciò che è male scrutando e apprendendo semplicemente l'orientamento finalistico, posto da Dio, negli esseri da essa considerati nell'esperienza. La legge naturale, quindi, è più lumen, cioè capacità di scoperta della legge eterna...*"

<sup>39</sup> *Veritatis Spondor*, 43.

<sup>40</sup> *Ivi*, 40: "*The role of human reason in discovering and applying the moral law: the moral life calls for that creativity and originality typical of the person, the source and cause of his own deliberate acts.*"

according to his nature as living, corporeal, rational and social being.

Essentially, the natural law is universal, knowable and immutable.<sup>41</sup> It is universal because it is the same "law" common and known by all peoples in all times, thus it has a universal value. It is knowable because it is naturally known by man by his sole reason, thus it cannot be ignored any creature that is considered rational being. It is immutable because its primary precepts cannot be changed by any human authority. However, not only the knowledge and the understanding that man possesses but also the application of its general principles may vary according to time, cultures and places.

## 5. Natural Law in the Scholastics

William of Ockham believes that reason alone is sufficient to establish all the imperatives that constituted natural moral law. His "*reason's categorical imperative*" includes the sum total of precepts, which obliged every rational human being with a blinding evidence, and which formed the foundation of the moral life.<sup>42</sup> A radical change is introduced with this line of thought. Reason loses its capacity of moral evaluation and has become a catalogue of the existence of the known obligatory precept. As categorical imperative, moral reason upholds the necessity of obedience to the obligation for its own sake. The precept as instruction on the part of Divine Legislator becomes an absolute principle of morality. The essential relationship "God-man" was reduced to pure revelation and imposition on the part of God to man. The spirit of moral action is no longer the capacity of man to justify his action as good or evil but the obligation to obey the precept. The *potentia Dei absoluta* of Ockham becomes the absolute sovereignty of the State and of legal positivism where the only source of law is the sovereign will of the legislator.<sup>43</sup>

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<sup>41</sup> Cf. R. Pizzorni, *Diritto, etica e religione* (Roma 2006) 1272-283.

<sup>42</sup> Cf. G. De Lagarde, *La naissance de l'esprit laïque au déclin du moyen âge*, vol. 6, *L'individualisme ockhamiste* (Paris 1946) 124-127.

<sup>43</sup> *Il Diritto naturale nella dottrina sociale della Chiesa*, in *La Civiltà Cattolica* 140 (1989/II) 521-527.



Francisco de Vitoria sustains that moral law does not derive from a force external to man but from his own nature that reason can discover. The problem of emphasizing the role of human rational nature separated from the Christian Revelation is to construct a natural moral law that is metaphysically well founded but theologically weak. The consequence of the systematic separation of philosophy and theology is the infringement of unity of the human and divine fields of knowledge. Eventually, the reflection on the unity of man's end suffered division too: man's end is cogitated in two points of view: the natural, rational and philosophical on one side and the supernatural, spiritual and theological on the other side. There is a need to put back together the fracture caused by the continuous disintegration between philosophy and theology. Unfortunately, the reflection on the succeeding periods worsened the gap and created systems of thought at the expense of the real concept of natural law.

## 6. The Deformation of the Concept of Natural Law

Renaissance and Reformation paved the way to the speedily secularization of the human society; such environment was conducive for the formation of new theories on natural law based on purely human reason. The 17th-century Dutch jurist Hugo Grotius believed that humans by nature are not only reasonable but social. Thus the rules that are "natural" to them – those dictated by reason alone – are those which enable them to live in harmony with one another. The founder of the new School of Natural Law affirms the existence of natural law predictable by human reason on which every positive law is grounded. He differed from the Stoic's concept of natural law by the fact that he removed its divine constitutionality which was the guarantee of the order in the world of creation.

He asserted that the norms dictated by reason are still effective "*etiamsi Deus non daretur*"<sup>44</sup> (as if God did not exist or He were not concern with man's affair). The removal of God and theology in the field of law prepared the formation of the modern

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<sup>44</sup> See H. Grotius, *De iure belli ac pacis, Libri Tres, Classics of International Law*, n. 3 vol. I-III (1925), *Prolegomena* § 11 at 13.

States independent of any religious influence in the whole of Europe.

Grotius elaborated the formula "*etiamsi Deus non daretur*" during the Thirty Years War<sup>45</sup> in order to overcome the horrible religious conflict of fundamentalism that afflicted Christians in Europe. He was convinced that human reason was self-sufficient, capable of distinguishing good and evil without any help from divine revelation; rather, any reference to revelation as the cause of the conflict among the various Christian denominations should be avoided. This does not necessarily mean that Grotius arrived at the explicit denial of the existence of the objective nature of man, yet he diminished its essence through a reductive concept of reason. This concept is constituted by evident principles internal to man and from some notions deducted through abstract reasoning. In this context, man is considered individually with his natural inclinations and his natural subjective rights that positive objective law must acknowledge and defend.

This theory of rationalist iusnaturalism<sup>46</sup> (*Iusnaturalismus*) becomes the radical affirmation of innate and inalienable rights. There is an abrupt change of emphasis, *i.e.*, from objectivity of the natural right grounded on natural law, more stress was given to the subjectivity of natural right; from duties to freedom; from the law as norm of action to the law as faculty of action. This leads to the *absolutization* of the subjective rights of individuals. Thus, "where nothing can be taken for granted, everything becomes possible, and nothing is impossible any longer. Now there is no

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<sup>45</sup> Cf. Historical notes from the Church of the Brethren network, in [http://www.cob-net.org/text/history\\_30yearwar.htm](http://www.cob-net.org/text/history_30yearwar.htm).

<sup>46</sup> There are different types of iusnaturalism (*iusnaturalismus*): the rationalist iusnaturalism that argues that moral values must be discovered by solely human reason and the theological iusnaturalism that argues that moral values and rights must be discovered by human reason through the light of divine revelation. Cf. F. Todescan, *Le radici teologiche del giusnaturalismo laico. Il problema della secolarizzazione nel pensiero giuridico di Ugo Grozio*, (Milano 1983); Id., *Le radici teologiche del giusnaturalismolaico. Il problema della secolarizzazione nel pensiero giuridico di Jean Domat*, (Milano 1987); Id., *Le radici teologiche del giusnaturalismo laico. Il problema della secolarizzazione nel pensiero giuridico di Samuel Pufendorf*, (Milano 2001).

value capable of sustaining man, and there are no inviolable norms. All that counts is man's ego and the present moment.<sup>47</sup>

In the doctrine of iusnaturalism the notions of *state of nature* and *social contract* are of primary importance. Thomas Hobbes considers important the passage from a "*state of nature*" wherein individual lives separately and in permanent conflict to a civil *convivenza*. This passage may take place through a pact or agreement that signifies the transfer of the natural rights of each individual to the will of the Sovereign as the sole custodian of force. In this context, Hobbes understands natural law as the "dictate of the right reason" that compels to seek peace as a condition to safeguard life.

According to another advocate of iusnaturalism, John Locke, the "law of nature teaches all men, provided that they want to heed its teaching, that insofar as all are equal and independent, no one should harm anybody in life, in health, in freedom and in property." Locke delineated a model of civil *convivenza*, where if on one side emphasizes the contractual hypothesis of Hobbes, on the other side eliminates some absolute elements by assigning to the State, in a liberal approach, the task of safeguarding all the natural rights of the citizens.

In the 18th century, the theory of iusnaturalism re-elaborated by Jean-Jacques Rousseau and by Immanuel Kant, was strongly criticized by George Wilhelm Friedrich Hegel. He denied the possibility of founding the State on a pact stipulated by individuals. After Hegel, the elaboration of positive law and natural law that excludes its historical development became an arduous task. The distinction was challenged by the legal positivism of Hans Kelsen. He excluded the possibility of deriving from nature or reason the substantial norms to govern the society. However, insofar as they are beyond the positive law, nature and reason may serve as model of such norms.

In the 19th century a critical spirit molded in the School of Natural and Historical Law of the 16th century continue to

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<sup>47</sup> J. Ratzinger, *The Christianity and the Crisis of Cultures*, (Colorado 2006) 93-94.

dominate discussions of natural law. The existence of a natural law was generally regarded as improvable, and it was largely replaced in legal theory by utilitarianism of Jeremy Bentham. The English philosopher invoked Helvetius's phrase, "greatest happiness for the greatest number" as his general ethical principle. Bentham dismissed all notions of "natural rights" or "social contracts" as enclosed in socio-political documents *viz.*, the American *Declaration of Independence* in 1776 and the French *Declaration of the Rights of Man* in 1789. He also dismissed all "*ipsedixitisms*", *i.e.* moral judgments based on criteria such as "sympathy" or "intentions". For Bentham, only consequences have their importance. Actions are to be judged strictly on the basis of how their outcomes affect general utility.

The elaboration of various systems of thought widened the gap between human nature and natural law. The reaction against rationalism, universalism and individualism brought to another direction which is the affirmation of a new concept of Natural law based on pure *ratio naturalis*. The new movement of thought thus recurred to the idea of supernational law and legal positivism that consider law as simply "the command of the ruler. The result is the antagonism between rationalism and positivism; universalism and particularism; individualism and nationalism. Thus, the "nation" revolted against "Natura."<sup>48</sup> This was the essence of the revolution in German schools of natural and historical law.

## 7. The Re-interpretation of the Concept of Natural Law

The only way to recover the genuine concept of natural law is to re-interpret it according to the framework set up by the School of Neo-Scholastism.<sup>49</sup> It considers Natural law as an effective rational instrument in constructing the foundation of moral

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<sup>48</sup> O. Gierke, *Natural Law and the Theory of Society: 1500 to 1800*, (New Jersey 2001) 11.

<sup>49</sup> Cf. J. Hervada, *Introduzione critica al diritto naturale*, (Milano 1990); R. Pizzorni, *La "lex aeterna" come fondamento ultimo del diritto secondo S. Tommaso*, (Roma 1961); J. Leclercq, *Leçons de droit naturel. I. Le fondement du droit e de la société*, (Namur-Louvain 1933); S. Solinas, *Il diritto naturale secondo Giovanni Duns Scoto – excerptum theseos ad doctoratum in iure civili*, (Roma 200).

law and the ethical principles of the social doctrine of the Church. Moreover, it can be an instrument in launching a fruitful dialogue with the modern culture.

The two-edged language used by the Catholic moral scholars in these past two centuries is useful to communicate to peoples of different moral, cultural, social and political beliefs. The metaphysical concept of natural law discerned by reason in the light of Christian revelation is bound to penetrate and gather consensus. This is because, the ontological parlance allows this school to establish a dialogue with those who do not rely on the “supernatural help” to state their judgment and with whom it would be difficult to reason out on the theological perspective. With these individuals, the point of departure for every discussion on natural law presupposes a well defined concept of man: his human nature and dignity as human person – a starting point where all agree and all are identified with. While on the other side, the additional input of Revelation will gather together people of common faith in God as the Creator, to start the discussion on natural law putting the centrality of the person of Jesus Christ and the concreteness of the existence of human person as a reality that no Christian will ever dare to deny. Both languages will be the basis on understanding the real nature of man not only in the intellectual level but in his “being and becoming” as a consequence of the observance of the natural moral law.

#### 8. From Grotius's «*etiamsi Deus non daretur*» to Ratzinger's «*veluti si Deus daretur*»

In the book written before his election to the Papacy, *The Christianity and the Crisis of Cultures – The Europe of Benedict XVI*, Card. Ratzinger addresses the “crisis of culture” that rampantly immerses not only Europe but also the whole of the Western world. The damaging result of this cultural crisis are greater threats to security of man as individual and as member of human society, the increasing poverty not only material but cultural as well, and the dangers of genetic engineering that will end to a systematic “moral decadence”.

The Judeo-Christian roots and foundation of the Continental Europe are being replaced by “modern enlightenment philosophy.”

These philosophical movements recognize only what can be mathematically or scientifically proven, and deny any metaphysical proposition of reality. The refusal to recognize the existence of God and the objectivity of Truth lead to consider morality as a relative concept. This "relativism" leads to a "confused ideology of freedom that leads to dogmatism" and ultimately "to the self-destruction of freedom".

Cognizant of the threatening serious problems of the nihilistic secularism that pervades Europe and the Western World, Ratzinger proposes a solution that has nothing to do with politics, but with a spiritual renewal based on the powerful example in history of St. Benedict and the amazing cultural impact the Benedictine Order had on a similarly declining Europe in the Middle Ages.

In view of this spiritual renewal that Joseph Card. Ratzinger invited men of goodwill to reflect upon their origin and freely embark again on the road of understanding oneself as made, not in his own image, but in God's image. Man of the post-modern age should heed Pascal's challenge: to pay attention to those who claim to have "seen" and "experienced the Living God" and begin to live "as if God existed".

Ratzinger's invitation also includes the renewal of the concept of natural law by inverting the famous slogan of Grotius, from «*etiamsi Deus non daretur*» to «*veluti si Deus daretur*».<sup>50</sup> Unlike Grotius's «*etiamsi Deus non daretur*» that was addressed to his contemporary believers, the «*veluti si Deus daretur*» of Ratzinger is addressed to those who no longer believe in God, namely the atheists. The Cardinal is asking them to confront the present moral problems besetting man by accepting the hypothesis of the existence of God.

In extending his invitation especially to those who do not accept "supernatural help" in their personal quest for wisdom,

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<sup>50</sup> J. Ratzinger, *L'Europa di Benedetto nella crisi delle culture*, (Vatican 2005) 29-65: Benedict XVI, *Discorso alla Pontificia Universitas Lateranensis*, (October 21, 2006) in [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2006/october/documents/hf\\_ben-xvi\\_spe\\_20061021\\_lateranense\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/october/documents/hf_ben-xvi_spe_20061021_lateranense_en.html).

Ratzinger uses the medium of communication typical of the Neo-Scholasticism. He appeals to the non-believers as rational thinker who would like to restore life to the idea that natural law, as accepted by any responsible individual capable of acknowledging it, is a valid precept without the necessity of imposition from an external authority. Again, the Prelate does not demand from non-believers to embrace the Catholic faith nor to practice the Christian morality but he invites them to re-examine their moral convictions under the possibility of the existence of a divine being.

By inviting non-believers to consider the existence of Divine authority, the Cardinal hopes that western culture can awaken from its agnostic and cynical slumber and to open wide the horizon of reason. If until now many close their eyes so as not to see and feel the possibility of God's existence and thereby limiting their philosophical inquiry in the realms of pure reason and depriving the science itself of its transcendental cognizance, the time has come for a more mature reflection without excluding the possibility to be attracted by it. Openness therefore! This is essential to the correct understanding of natural moral law. In fact, the concept of natural law from the ancient thinkers to the Scholastics is far from imposing to no one an unacceptable norm of law; rather it seeks to provide every possible criterion that reason can conceive in order to form a person capable of distinguishing what is clearly right and palpably wrong. An approach of this kind is an appreciation of man's rational capacity and his personal responsibility. However, the acceptance of the possibility of God's existence will never diminish human nature's capacity and man's personal determination; rather man will be placed in another level without depriving him of any of his attributes: human and divine. Again Ratzinger does not want non-believers to embrace the belief in Christian dignity of man in contraposition with human personal dignity, he only wants them to simply consider the possibility of not depriving themselves, even only on the level of imagination, of the prospect of divine predilection. After all, there is no harm in trying to live and act *«veluti si Deus daretur»*.

As Benedict XVI emphasizes: "To live in the world *«veluti si Deus daretur»*" brings with it the assumption of a responsibility that knows how to be concerned with investigating every feasible route

in order to come as near as possible to him who is the goal towards which everything tends (cf. I Cor 15:24).<sup>51</sup>

## SECOND PART

It will be difficult to ascertain the nature of natural moral law without taking into consideration the distinction between the constitutionality of divine law and the constitutionality of human law. In fact, the logical consequences deriving from a correct understanding of the concept of natural law will not simply be a concern of the speculative discipline but will inevitably provoke a general judgement on ethics, on social institutions, on the essence of man in whatever societal relationship he entered into.<sup>52</sup> Knowledge of the elementary elements that constitute law is necessary in order comprehend its cause and effect, its subject and object, its limits and extension in man's integral life. In this context, law becomes a social phenomenon that involves man in every aspect of the reality of his existence as rational human being.

### 1. The Concept of Law?

Juventius Celsus defined law as the "art of good and just."<sup>53</sup> It can be considered as the oldest practice of a noble art at the service of man in his totality: past, present and future. Etymologically, law may derive from the Latin, "*iustum*" – just (*iustitia*) or "*iussum*" – command (*iubere*). The two concepts of *iustum* and *iussum* are complimentary terms because many things are commanded or prohibited inasmuch as they are good and evil. However, there are times wherein a morally indifferent matter may be licit and illicit just for the fact that it is commanded and prohibited. Law, in its very essence, is that which is intrinsically good (*ius quia iustum*) and it is intrinsically good that which is commanded by God (*iustum quia iussum*). Law may be identified with the

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<sup>51</sup> Benedict XVI, *Discorso alla Pontificia Universitas Lateranensis*, (October 21, 2006), in [http://www.vatican.va/holy\\_father/benedict\\_xvi/speeches/2006/october/documents/hf\\_benxvi\\_spe\\_20061021\\_lateranense\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/speeches/2006/october/documents/hf_benxvi_spe_20061021_lateranense_en.html).

<sup>52</sup> Cf. R. Bagnulo, *Il concetto di diritto naturale in San Tommaso d'Aquino* (Milano 1983) vi.

<sup>53</sup> Celsus, *Digestum*, 1,1,1: "*Ius est ars boni et aequi*".



concept of justice, if it is a clear expression of what is objectively just, while it may be identified with legitimacy or licitness if it is, likewise a clear expression of what is objectively licit.

Law can be examined in various perspectives. Insofar as the object of justice, law is mandatory and its enforcement is not entrusted to individual but to the legitimately constituted public authority. Law *qua talis* governs interpersonal relationships and, therefore, it has essentially a horizontal dimension, while ethics, insofar as it governs relationships between man and his Creator, has essentially a vertical dimension. There is an essential connection between law and morals.<sup>54</sup> A moral norm directs the life of man as individual; whereas a legal norm governs the life of man insofar as member of a human society.<sup>55</sup> The legal norm incorporates even the moral norm in its provision, for this reason a provision of law cannot be immoral; moral norm on the other hand, cannot include in its content the legal norm. The moral norm *qua talis*, if not enacted as law cannot be reinforced.

The concept of law includes all the rights and obligations which are proper to man. Man as person, center of rights and attributions, realizes his human personality in a legal relationship with his fellow men; that is why one speaks of mutual rights and duties. Right and duties can be defined according to their objectivity, subjectivity and of their formal causality.

### ***Objectivity of the Law***

The objectivity of the law is understood as the acknowledgement of rights conferred to a person and duties expected of him. By nature men are constituted equal in all levels and aspects of natural human existence, as a consequence, their objective rights and duties are recognized under the same principle of equality. The equality of rights and duties, common to all men, insomuch as it complies with the demand of justice rooted in the nature of

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<sup>54</sup> Cf. R. Pizzorni, *Diritto, etica e religione* (Roma 2006) 173-195; 174: "Infatti, la vera nozione del diritto natural implica una stretta connessione tra diritto e morale."

<sup>55</sup> Cf. J. Leclercq-G. Lucini, *Diritto e società*, (Roma 1964) 46-47.

man, is safeguarded on the basis of specific principles of justice which in turn are grounded in the natural order.

The legal relationship, which is established among subjects who are by nature distinct from one another while they come into terms recognizing their equality before the law, is governed by the principle of commutative justice. In this kind of relationship, the individual rights and duties are exercised among individuals, i.e., person to person. While, the legal relationship, which is established by individual with the society, is governed by the principle of legal justice, the legal relationship, which is established by the society towards individual, is governed by the principle of distributive justice.<sup>56</sup>

### ***Subjectivity of the Law***

In its subjective meaning, *ius*<sup>57</sup> designates the rights and duties that are expressions of the moral faculty to comply, to pretend and to possess something based on the legal norm.<sup>58</sup> This subjectivity should always be taken into consideration even when expressing a moral faculty of performing an obligation because every obligation demands the right in order to comply with it. This faculty is considered by many jurists as subjective right.<sup>59</sup>

If the subjectivity of the law receives formal recognition through a provision of the law, the subjective right will become a legal faculty to act upon, to require and to acquire. Consequently, this faculty demands a fulfillment of an obligation that others are bound to respect.

### ***Formal Causality of the Law***

The concept of the formal causality of the law is understood as the rights and duties considered to be the object of the specific

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<sup>56</sup> Cf. R. Pizzorni, *Diritto, etica e religione* (Roma 2006) 59-131.

<sup>57</sup> In the Anglo-Saxon world, *ius* with its subjective connotation is usually translated as *right*.

<sup>58</sup> *Ius* nella sua accezione soggettiva indica la facoltà di agire in base ad una norma, cf. *Dizionario giuridico romano* (Napoli 2000) 261.

<sup>59</sup> F.X. Werns-P. Vidal, *Ius Canonicum*, 1 (Roma 1952) 66.

legislative norm. The norm that embodies the right and duties is considered to be a command of justice. It is right/just insofar as it is in conformity with the law but the law in order to be just should be founded on the will of God who demands the respect of the natural order. In fact, the law achieves its moral binding force only because it is in conformity to God's will. The eternal law as supreme reason expresses the will of God; that is why all things are ordered in the most perfect way.<sup>60</sup> Everything that is just in the secular laws necessarily originates from the eternal law of God.

As a rule of justice, law can be distinguished in natural, divine positive, civil positive and ecclesiastical positive law.

*Natural law* is a participation in the eternal law<sup>61</sup> and, in an absolute way; it lays down the rights and obligations which are proper to man as a social being.<sup>62</sup> *Divine positive law* sets, in the supernatural order, the things that man must do as strict compliance to the explicit will of God in the revelation. *Civil positive law* lays down the rights and obligations of man inasmuch as he is a member of civil society (civil order). *Ecclesiastical positive law* lays down the rights and obligations which are proper to man as member of an ecclesiastical society (canonical order).

The law, as formal expression of rights and duties, is in accordance with the demands of justice inherent in the nature of man; for which the human nature in a particular individual as person<sup>63</sup> is identified as the subject of rights and attributions.

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<sup>60</sup> Cf. St. Augustine, *De libero arbitrio*, lib. 1, c. 6 (P.L. 32; 1229).

<sup>61</sup> St. Thomas Aquina, *Summa Theol.*, 1.2, q. 91 a. 2 (*in corpore*): "*Unde patet quod lex naturalis nihil aliud est quam participatio legis aeternae in rationali creatura.*"

<sup>62</sup> Cf. Michiels, *Normae generales*, 4: "*Quando ergo affirmamus legem naturale esse «iuris» normam ac ordinis iuridici fundamentum, non de tota lege naturali loquimur... sed de solis legis naturalis praescriptis quae, quoad certa puncta, stricta iura seu uniuscuiusque rigore sua determinant ordinemque iuridicum ordinant.*"

<sup>63</sup> Cf. Boethius, *De Duabus Naturis et una Persona Christi*, ch. 3 (P.L. 64; 1345). See also U. Degli'Innocenti, *Il problema della persona nel pensiero di S.Tommaso*, (Rome 1967) 45-67.

In this kind of relationship the order of precedence should be respected; thus, justice comes before the law and man comes before [human] justice. This is because the nature of man is an expression of justice insofar as man is the expression of God.<sup>64</sup>

The subordination of constitutional human law to the constitutional divine law demands the subordination of human justice to the divine justice. In this perspective the constitutionality of divine law (justice of God) is essentially the primary basis of the constitutionality of human law (human justice).

### ***The divine law in human nature – human rights – precept***

The divine law can be identified, first and foremost, with the non-written law of human nature. This is because God created man in his own image<sup>65</sup> and likeness and endowed him with something that comes from Him, the human soul which is the principle of life. With the advent of Christ the same man created by God, is endowed with another dignity: from creature he has become child of God. It follows that human right of *divine constitution* is understood as a rational, essential, absolute, universal and immutable order of ethical and legal character inherent in the nature of man and in virtue of which man is obliged to act not only as creature but also a child of God (*agere sequitur esse*).

The “rights” and “duties” of man are law of divine constitution. These rights and duties are inherent in the very same nature of man and can be exercised as long as man is faithful to his nature. With the advent of Christianity, these fundamental rights and duties of men have been “canonized” by the divine revelation.

The precepts of divine law, eternal and immanent, is at work in all men. It is manifested among men as right reason. The reason commands that which should be done and prohibits that

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<sup>64</sup> Man is made in the image and likeness of God. Cf. Gen. 1:26-27; Gen. 9:6; Acts 17:28; 1 Corinthians 11:7; James 3:9.

<sup>65</sup> Cf. St. Thomas Aquinas, *Summa Theol.*, 1.2, the *Prologus* speaks of man as created by God in his own image “*secundum quod et ipse est suorum operum principium, quasi liberum arbitrium habens, et suorum operum potestatem.*”

which should not be done. Gradually, reason is identified with the conscience.<sup>66</sup>

The natural law, insofar as it is an expression of reason "that associates men to gods, commands to observe the same precept."<sup>67</sup> In virtue of this non-written law knowable to rational being;<sup>68</sup> man by nature is prohibited to provoke any damage, physical or material, to nobody. This law of reason motivates men to love one another, for love is the foundation of law.<sup>69</sup> Insofar as the law of reason sustains and directs the life of men in conformity with the desire of gods, it is a participation of the eternal law that directs and sustains the whole of creation.<sup>70</sup>

Seneca (4-65 AD) affirmed that man is moved towards good by the presence of the divinity that is in him.<sup>71</sup> The inescapable law of reason that comes from the nature itself governs and rules all things. All men in virtue of this law of nature are brothers and sister; and they should be ready to accept and love one

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<sup>66</sup> John XXIII, *Pacem in Terris*, 5: "But the Creator of the world has imprinted in man's heart an order which his conscience reveals to him and enjoins him to obey: This shows that the obligations of the law are written in their hearts; their conscience utters its own testimony."

<sup>67</sup> Cicero, *De legibus*, 1,6, 18-20: "*Lex est ratio summa, insita in natura, quae iubet ea quae facienda sunt, prohibetque contraria. Eadem ratio cum est in hominis mente confirmata et perfecta, lex est.*"

<sup>68</sup> Cicero, *Pro Milone*, 4, 10: "*Est igitur haec, iudices, non scripta, sed nata lex, quam non didicimus, accepimus, legimus, verum ex natura ipsa arripuimus, hausimus, expressimus; ad quam non sed facti, non instituti, sed imbuti sumus.*"

<sup>69</sup> Cicero, *De legibus*, 1,15, 42-43: "*Ita fit ut nulla omnino iustitia, si neque natura est, eaque quae propter utilitatem constituitur utilitate illa convellitur, utque si natura confirmatura ius non erit, virtutes omnes tollantur. Ubi enim liberalitas, ubi patriae caritas, ubi pietas, ubi aut bene merendi de altero aut referendae gratiae voluntas poterit existere? Nam haec nascuntur ex eo quod natura propensi sumus ad diligendos homines quod fundamentum iuris est.*"

<sup>70</sup> Cicero, *De legibus*, 2, 4, 8-10.

<sup>71</sup> Seneca, *Epistulae*, 4, 12 (41): "*Prope est a te dues, tecum est, intus est. Ita dico, Lucili: hic prout a nobis tractatus est, ita nos ipse tractat. Bonus vero vir sine deo nemo est: an potest aliquis supra fortunam nisi ab illo adiutus exsurgere? Ille dat consilia magnifica et recta: in unoquoque virorum bonorum (qui dues incertum est) habitat dues.*"

another.<sup>72</sup> Every man deserves to be and should be respected, because he establishes a relationship with others as something holy: *Homo sacra res homini!*<sup>73</sup>

These pre-Christian thinkers laid the solid foundation of the natural law based on the nature of man as rational-social being in relation with the non written eternal law that connects him to God and to his fellow men.

## 2. Divine Constitutionality of Natural Law

### *Natural Law in Sacred Scripture*

The basis for the divine constitutionality of natural law is obviously found in Matthew 7:12: "Whatever you want people to do for you, do the same for them, because this summarizes the Law and the Prophets." This precept establishes a new kind of relationship because it considers "man" as "law" for another man. Aristotle had already affirmed the man is law for himself.<sup>74</sup> Man is law for his fellow man because he is a child of God, created in his image; as such, man is the object and subject of the law. Therefore, man "possesses in himself his own law, received from the Creator".<sup>75</sup> The binding force of this law derives from the creative will of God in the creation.<sup>76</sup>

Insofar as man is a law for another, the "*lex-homo*" persuades man to reach out and encounter other creatures like him. The precept of Christ embodied in "*lex-homo*" is the summary of the entire Mosaic Law and the teaching of the Prophets. It is no

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<sup>72</sup> Seneca, *Epistulae*, 15, 52 (95): "*Natura nos cognatos edidit, cum ex iisdem et in eadem gigneret. Haec nobis amorem indidit mutuum et sociabiles fecit. Illa aequum iustumque composuit; ex illius constitutione miseries est nocere laedi: ex illius imperio paratae sint iuvendis manus.*"

<sup>73</sup> Seneca, 1, c., 33: "*Homo, sacra res homini, iam per iusum ac locum occiditur et quem erudiri ad inferenda accipendaque vulnera nefas erat, is iam nudus inermisque producitur satisque spectaculi ex homine mors est.*"

<sup>74</sup> Cf. Aristotle, *Ethica Nicomachea*, lib. 4, c. 8, (10).

<sup>75</sup> *Veritatis Splendor*, 40.

<sup>76</sup> *Ivi.*

other than the law that God, the Creator gave to man at creation.<sup>77</sup> The "*lex-homo*" that the Creator has imprinted in the nature of man from the first moment of his creation, in the law of Moses and in the law of the Gospels is made concrete through a "covenant". In fact, both the laws of Moses and the Gospels are considered a pact of friendship that consists in being faithful to the demands of God. Man observes the "*lex-homo*" by being faithful to the demands stipulated in the covenant: respect for the primacy of God and the dignity of human nature.

St. Paul in the letter to the Romans 2:15, which is considered to be scriptural foundation of the natural law,<sup>78</sup> explicitly refers to the Golden rule of Mt. 7:12 when he affirms that,

"All who sin outside the law will also perish without reference to it, and all who sin under the law will be judged in accordance with it. For it is not those who hear the law who are just in the sight of God; rather, those who observe the law will be justified. For when the Gentiles who do not have the law by nature observe the prescriptions of the law, they are a law for themselves even though they do not have the law. They show that the demands of the law are written in their hearts, while their conscience also bears witness and their conflicting thoughts accuse or even defend them."

The pagans, who do not have the law, are by nature acting according to the law because they follow the law imprinted in

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<sup>77</sup> *Ivi.*

<sup>78</sup> John Paul II, Udienza Generale, (April 23, 1980) note number 1, the Pontiff affirms that "Le parole citate della lettera ai Romani 2,15, sono sempre state considerate, nella Rivelazione, quale fonte di conferma per l'esistenza della legge naturale. Così il concetto della legge naturale acquista anche un significato teologico." Cf. D. Composta, *Teologia del diritto naturale*, "Status quaestionis", Brescia 1972, Ed. Civiltà, pp. 7-22, 41-53; J. Fuchs, S.J., *Lex naturae Zur Theologie des Naturrechts*, Düsseldorf 1955, pp. 22-30; E. Hamel, S.J., *Loi naturelle et loi du Christ*, Bruges-Paris 1965, Desclée de Brouwer, p. 18; A. Sacchi, *La legge naturale nella Bibbia*, in *La legge naturale. Le relazioni del convegno dei teologi moralisti dell'Italia settentrionale* (11-13 settembre 1969), Bologna 1970, Ed. Dehoniane, p. 53; F. Böckle, *La legge naturale e la legge cristiana*, *ivi*, pp. 214-215; A. Feuillet, "Le fondement de la morale ancienne et chrétienne d'après l'Épître aux Romains," in *Revue Thomiste* 78 [1970] 357-386; T. Herr, *Naturrecht aus der kritischen Sicht des Neuen Testaments*, München 1976, Schöningh, pp. 155-164.

them,<sup>79</sup> *ipsi sibi sunt lex*, they are law for themselves – (*lex-homo*).<sup>80</sup> As a consequence, the non-believers unaware of the law of Moses, will not be excluded from the salvation if they continue to be “*lex*” for one another, *i.e.*, what intellect and conscience dictate them to be (image of God) and to do (the will of God for the common good).

The natural law in the passage of St. Paul cannot be correctly understood if it is separated from his theology. In fact, conscience for St. Paul is neither autonomy nor heteronomy but essentially “theonomy”,<sup>81</sup> *i.e.*, the reflection of God in human reason. Thus, “free obedience to God’s law in man’s conscience effectively implies that human reason and human will participate in God’s wisdom and providence.”<sup>82</sup>

These scriptural passages allow us to consider the constitutionality of divine law as the basis of the natural law and of the divine positive law that contains the Mosaic Law and the Golden rule.

### *Natural Law in the Fathers of the Church*

St. Ambrose (330-397) believes that the law of nature, written in the heart of man, is the work of God.<sup>83</sup> This law obliges

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<sup>79</sup> *Veritatis Splendor*, 42: “The light of natural reason whereby we discern good from evil, which is the function of the natural law, is nothing else but an imprint on us of the divine light”. It also becomes clear why this law is called the natural law: it receives this name not because it refers to the nature of irrational beings but because the reason which promulgates it is proper to human nature.”

<sup>80</sup> John Paul II, Udiienza Generale, *Discorso del Santo Padre ai partecipanti al Convegno sulla moralità pubblica*, (November 29, 1982) in [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/1982/november/documents/hf\\_jp-ii\\_spe\\_19821129\\_moralita-pubblica\\_it.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/1982/november/documents/hf_jp-ii_spe_19821129_moralita-pubblica_it.html).

<sup>81</sup> R. Pizzorni, *Il diritto naturale*, 136.

<sup>82</sup> Cf. *Veritatis Splendor*, 41.

<sup>83</sup> Ambrosius, *De Paradiso*, 9, 39 (P.L., 309): “*Id quod malum est, naturaliter intelligimus esse vitandum et quod bonum est naturaliter nobis intelligimus esse praeceptum. In eo igitur vocem Domini videmur audire, quod alia interdicit, alia precipiat. Et ideo si quis non obediit illis quae semel a Deo praecepta credimus, poenae obnoxius aestimatur. Dei autem praeceptum non quasi in tabulis lapideis atramento legimus inscriptum, sed cordibus nostris tenemus impressum spiritu*



man to honor his Creator and not to do to others what he does not want others do onto him.<sup>84</sup>

St. Augustine (354-430) retains that from the moment God created man from nothing, He wrote in the very heart of man an important precept of love: "Do not do unto others what you would not want others do onto you." No one can deny this precept of love because the judge and witness will be the same conscience of man.<sup>85</sup>

The thoughts of these two Fathers of the Church are re-elaborated by Gratian who gave a juridical definition of natural law: "*Ius naturale est, quod in lege et evangelio continetur, quo quisque iubetur alii facere, quod sibi vult fieri, et prohibetur alii inferre, quod sibi nolit fieri. Unde Christus in evangelio: «Omnia quaecumque vultis ut faciant vobis homines, et vos eadem facite illis. Haec est enim lex et prophetarum».*"<sup>86</sup>

### ***Natural Law in the according to the Father of Canon Law***

The teaching of Gratian on the divine constitutionality of natural law is clear and understandable.<sup>87</sup> According to the Father

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*Dei vivi. Ergo opinio nostra ipsa sibi legem facit. Si enim gentes quae legem non habent, naturaliter ea quae legis sunt, faciunt: eiusmodi legem non habentes ipsi sibi sunt lex, qui ostendunt opus legis scriptum in cordibus sui. Opinio igitur humana sibi tanquam Dei lex."*

<sup>84</sup> Ambrosius, *In Apocalypsis*, 19 (P.L. 17; 1009): "... et nulli se debere facere quod non vult ab alio pati. Hanc legem nullus qui sanae mentis est, ignorare permittitur."

<sup>85</sup> St. Augustine, *Enarratio in Ps. 57*, 1 (P.L. 36, 673); Cf. *Veritatis Splendor*, 52.

<sup>86</sup> *Decretum Gratiani*, D. 1 (*Dictum introductorium*).

<sup>87</sup> Recommended readings: G. Ambrosetti, *Diritto naturale cristiano, profile di metodo, di storia e di teoria* (Milano 1985); J. Gaudemet, *La doctrine des sources su droit dans le Décret de Gratien*, in *Revue de droit canonique* 1 (1951); G. Graneris, *La filosofia del diritto nella sua storia e eni sui problemi* (Roma-Paris-Tournai-New York 1961); O. Lottin, *Le droit naturel chez S.Thomas d'Aquin et ses prédécesseurs* (Bruges 1931); A. Passerin D'Entrèves, *La filosofia politica medievale* (Torino 1934); H. Rommen, *Die ewige Wiederkehr des Naturrechts* (translation G. Ambrosetti) Roma 1965; L. Bagolini, *Etica e verità nel discorso sulla giustizia*, in *Studi in onore di A. Biscardi*, III (1982); E. Cavalcanti, *Aspetti della strutturazione del tema della giustizia nel cristianesimo antico* in *Atti Accademia Romanistica Costantiniana*, VIII (1992); G. Falchi, *Fragmenta Iuris Romani Canonici* (Roma 1998).

of the science of Canon law, the divine constitutionality of natural law is the basis of every legal construction. The law of human constitution (civil and canon) is developed in the sphere of the divine constitutionality of natural law like a concentric circles whose center is occupied by man.

In explaining the connections and differences of the various legal systems (natural law, civil law, canon law), the Camaldulense monk defines the natural law as a *juridical order* common to all nations for the fact that it is perceived by man through his natural instinct.<sup>88</sup> The second part of the definition is an influence coming from Isidore of Seville. When confronted with the question on the distinction between natural and civil law, Gratian used the same wordings of Isidore: "*ius naturale est commune omnium nationum, eo quod ubique instinctu naturae, non constitutione aliqua habetur.*"<sup>89</sup> Although he followed the definition given by Isidore, he distanced himself with the latter only for the fact that there is a distinction between "forming a law" and understanding it through "natural instinct". On the other hand, Isidore recognized also the divine constitutionality of natural law when he affirmed that "*omnes leges aut divinae sunt aut humane*" and that divine laws are founded in the natural law (*natura constant*).<sup>90</sup>

According to Gratian, natural law is already included in the Law of Moses and in the Gospels (law of divine constitution).<sup>91</sup> Rather, he clearly affirmed that *the law of nature is not only of divine constitution*<sup>92</sup> *but it can be identified to the Law of Moses*

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<sup>88</sup> G. Falchi, *Fragmenta Iuris Romani Canonici* (Roma 1998) 226: "*Il diritto naturale, comune a tutti gli uomini e ad ogni nazione, proviene dall'instinctu naturae e perciò non è statuito positivamente. Esso corrisponde col diritto divino ed è immutabile.*"

<sup>89</sup> *Decretum Gratiani*, c. 7, D. 1.

<sup>90</sup> Isidorus Hispaniensis, *Etymologiarum Lib. V*, c. 2 (P.L. 82; 199): "*Omnes leges aut divinae sunt aut humane. Divinae natura, humanae moribus constant, ideoque haec discrepant, quoniam aliae aliis gentibus placent. § 1. Fas lex divina est: ius lex humana. Transire per agrum alienum, fas est, ius non est.*"

<sup>91</sup> *Decretum Gratiani*, D. 5 (I Pars): "*Sed cum naturale ius lege [mosaica] et evangelio supra [D.1] dicatur esse comprehensum.*"

<sup>92</sup> G. Falchi, *Fragmenta Iuris Romani Canonici* (Roma 1998) 225: "*I concetti di giustizia e legalità: la prima, corrispondente allo ius divinum (fas), è immu-*

and the Gospels.<sup>93</sup> Just as the Old and New Law are expressions of the Divine will, so thus "*naturalis lex veluti humana significatio aeternae legis Dei*."<sup>94</sup> "This participation of the eternal law in man is called natural law"<sup>95</sup> and, until now, it is still the basis for the divine constitutionality of the *ius naturale*.

The "juridical construction" of Gratian is grounded on the precept of the nature, i.e., "to do unto others what we want others to do unto us and not to do to others what we do not want others do unto us." The reason for founding his juridical construction based on the Golden rule is simply because this precept of divine natural law has been officially "canonized" by the evangelical law of Christ in Mt. 7:12.

This law inherent in the very nature of man (Aristotle's concept of natural law) is externalized by recognizing the "other as bearer of the law itself". The human reason that recognizes its validity concomitantly promulgates it.<sup>96</sup> Eventually, it becomes an effective norm of conduct for man, especially for the "other man" who has the same dignity like every one else. Man who is the center of the world of nature is also the center of the world of grace in Christian context. This man who is the center of the world of nature and grace, *qua talis*, is likewise the center of every juridical construction.

With the affirmation that *ius naturale* is a law contained in the Law of Moses and Gospels, insofar as it is the summary of

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*tabile e deriva dalla natura (per cui é denominata dallo stesso Graziano anche ius naturale)."*

<sup>93</sup> Cf. S. Pinckaers, *The Sources of Christian Ethics* (Edinburg 2001) 404-405: "Within the context of the *Summa theologiae*... the content of natural law was taken from philosophers such as Aristotle and Cicero, it was built into the setting and structure of a theological framework. Here natural law was considered a participation in the eternal law of God and in direct relation to the law revealed in Moses and the Gospels; grace, which completed this law, was included."

<sup>94</sup> *Veritatis Splendor*, 43: "In this way God calls man to participate in his own providence, since he desires to guide the world – not only the world of nature but also the world of human persons – through man himself, through man's reasonable and responsible care. The *natural law* enters here as the human expression of God's eternal law."

<sup>95</sup> St. Thomas Aquinas, *Summa Theo.*, I-II, q. 91, a. 2.

<sup>96</sup> *Veritatis Splendor*, 42.

the precept of the Golden rule, Gratian intended to set this precept of divine constitution as the basis of the construction of every legal system (civil and canon law) and their basic institutions.

In the concentric system, there is a unity between natural law and divine positive law. The unity consists of the fact that both of them share the same center occupied by man. Based on the principle of unity of the natural and divine positive law, the legal personality of man is clearly absolute because *qua talis* he possesses an absolute value.<sup>97</sup> He is the "*fondamento primo..., fonte dei contenuti primordiali..., giustificazione della obbligatorietà... e il fine del diritto.*"<sup>98</sup> Most of all, the reason why man occupies the center of this concentric structure is because man, as the core of the legal order, is the subject and object of God's eternal law.<sup>99</sup> For this reason, the human person does not find his justification in himself but in God who has constituted him as the foundation and ultimate end of every law.<sup>100</sup>

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<sup>97</sup> Cf. L. Bender, *Normae generales de personis* (Roma 1957) 7: "*Omnis capacitas iuris seu personalitas est aliquid absolutum, quia etiam ius est aliquid absolutum, habens valorem absolutum. Eo quod homo est capax iuris seu persona, ipse pertinent ad ordinem iuridicum, qui est absolutus et unicus. Non dantur in nostro mundo plures ordines iuridici, sed unus tantum. In eo comprehensi sunt et in eo apud omnes homines. Sane, in hoc ordine iuridico unico distinguuntur plures dicamus sectiones, sed ordo iuridicus non est divisus in plures partes. Non agitur de divisione proprie dicta, sed de distinctione partium unius totius indivisi.*" J.G. Martin, *Le norme generali del Codex Iuris Canonici* (Roma 2006) 88ff.

<sup>98</sup> AA. VV., *Il Diritto nel mistero della Chiesa* (Roma 1988) 6-11: 11: "*Collocata la persona umana quale centro e vertice del diritto, appare indiscussa la tesi secondo cui il diritto – nella molteplicità e complessità dei suoi problemi teorici e pratici – non è pensabile disancorato dalla struttura costitutivo-esistenziale dell'uomo. Solo discendendo dalla persona umana al diritto e risalendo dal diritto alla persona è possibile coglierlo nella sua autenticità umana e umanizzante. E' evidente – osserva G. Campanini – che, in questa prospettiva, la fondazione del diritto presuppone la fondazione della persona; perciò solo una solida fondazione della persona sul piano filosofico può schiudere la via a un ricupero del valore personalistico del diritto.*"

<sup>99</sup> John Paul II, *Udienza generale*, (August 22, 1984): "*Il soggetto della legge naturale è infatti l'uomo non soltanto nell'aspetto "naturale" della sua esistenza, ma anche nella verità integrale della sua soggettività personale. Egli ci si manifesta, nella rivelazione, come maschio e femmina, nella sua piena vocazione temporale ed escatologica.*" in [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/audiences/1984/documents/hf\\_jp-ii\\_aud\\_19840822\\_it.html](http://www.vatican.va/holy_father/john_paul_ii/audiences/1984/documents/hf_jp-ii_aud_19840822_it.html).

<sup>100</sup> AA. VV., *Il Diritto nel mistero della Chiesa* (Roma 1988) 11.

The divine constitutionality of the precept lies in the initial will of God who created all men equal and with the same rights and duties.<sup>101</sup> The *subjectivity* and *objectivity* of this precept consist in the right of every man to have what is due to him as man (subjective right) and in that which is right that every one as man must have from another (*lex-homo*). This precept is the foundation of the divine constitutionality of natural and divine positive law.<sup>102</sup>

### 3. Foundational Constitutionality of Natural Law

Let us now examine the basal constitutionality of the natural law as the foundation of both the constitutionality of divine positive law and the constitutionality of human positive law (civil law and canon law).

#### *Foundation of the Positive Law of Divine Constitution*

In the concept of Gratian, natural law is that which is commanded and prohibited by God through the Golden rule: "do to others as you would have them do unto you and not do to others as you would have them not do unto you." Insofar as natural law is of divine constitution, it follows that the divine constitutionality of natural law is also the basis of the divine constitutionality of the divine positive law.<sup>103</sup>

Both the natural law and the divine positive law enjoy the same authority because both of them come from the will of God: "*ius naturale est quod in lege et evangelio continetur.*"

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<sup>101</sup> John XXIII, *Pacem in terris*, 9: "Any well-regulated and productive association of men in society demands the acceptance of one fundamental principle: that each individual man is truly a person. His is a nature that is endowed with intelligence and free will. As such he has rights and duties, which together flow as a direct consequence from his nature. These rights and duties are universal and inviolable, and therefore altogether inalienable."

<sup>102</sup> John XXIII, *Pacem in terris*, 28: "The natural rights with which We have been dealing are, however, inseparably connected, in the very person who is their subject, with just as many respective duties; and rights as well as duties find their source, their sustenance and their inviolability in the natural law which grants or enjoins them."

<sup>103</sup> Divine positive law is the law revealed in Moses and the Gospels and in the Revelation.

The normative provision of the Mosaic law and the Gospel is the "positivization" on the part of God of the law of nature. In fact, the prescriptions of the law and all the teachings of the Prophets are summarized in the Gospel's precept of Mt. 7:12.

Everything that is against the natural law is against the will of God and, consequently, is also against the Sacred Scripture.<sup>104</sup> In doubt, between the prescriptions of the divine positive law and the prescriptions of natural law, "one must comply with the precepts of the natural law."<sup>105</sup>

The natural law is common to all nations because it is found "in the natural inclination and the natural reasoning of man"<sup>106</sup> to consider some human practices as right, viz., "the union between man and woman, the rearing and education of offspring, the hereditary succession, the common possession of things, the equal

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<sup>104</sup> *Decretum Gratiani*, c. 11. D. 9 (*Dictum Gratiani*): "Cum ergo naturali iure nihil aliud praecipiatur, quam quod Deus vult fieri, nihilque vetetur, quam quod Deus prohibet fieri; denique cum in canonica scriptura nihil aliud, quam in divinis legibus inveniatur, divinae vero leges natura consistant: patet, quod quaecumque divinae voluntati, seu canonicae scripturae contraria probantur, eadem et naturali iuri inveniuntur adversa."

<sup>105</sup> *Decretum Gratiani*, c. 11. D. 9 (*Dictum Gratiani*): "Unde quaecumque divinae voluntati, seu canonicae scripturae, seu divinis legibus postponenda censetur, eisdem naturale ius preferri oportet."

<sup>106</sup> Cf. R. Pizzorni, *Diritto, etica e religione* (Roma 2006) 267: "Riassumendo, la legge naturale é naturale: 1) In quanto ha la sua origine intima (ordine genetico) o causalità intrinseca nell'inclinazione o tendenza spontanea (a natura), per cui é inclinazione naturale. 2) In quanto ha la sua finalità (ordine teleologico) in quei beni che il soggetto riconosce necessari ed esige per la propria e naturale perfezione per attuare la propria natura di uomo ragionevole (secundum naturam), per cui é conoscenza razionale." See also S. Pinckaers, *The Sources of Christian Ethics* (Edinburg 2001) 404-405: "For [St. Thomas], natural law was the expression, in the form of precepts, of our natural inclinations, which were guided by our inclinations to goodness and truth. Thus, natural law, imposed externally when taught, was in reality written in the human heart – that is, in the very nature of our human faculties of reason and will, at the root of free action. This teaching on natural inclination was fundamental for St. Thomas. It established natural law and provided the basis for morality... In St. Thomas's view, inclinations, like natural law, were God's most precious work in the human person, a direct, unique participation in his own wisdom, goodness and freedom and the emanation of the eternal law."

freedom of all, the acquisition by all of all things coming from the heaven, land and sea, the restitution of a thing deposited or money loaned, the self-defence."<sup>107</sup>

The right and duties of man towards another and the rights and duties of man towards God are enclosed in the natural law. *Ius naturale* is immutable, not only because it is connatural to the nature of man, but also because it is an expression of a double creatural value: the immutability of God as the Creator and the immutability of the nature of man as the creature.

The natural law has its primacy in history and in dignity on divine positive and human positive law because, respectively, it precedes the former and it sets up the latter. There is no excuse against the precepts of the natural law; its derogation and dispensation<sup>108</sup> is an exercise of an authority that surpasses that of man.

The divine positive law, insofar as it is the "positivization" of natural law, is immutable because of the perennial values of the divine justice. On the other hand, the changes that may take place in the precepts of natural law are not substantial changes because they are part of the complex and mysterious reality of the present economy of man's salvation.

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<sup>107</sup> Cf. *Decretum Gratiani*, c. 7. D. 1: "*Ius naturale est commune omnium nationum, eo quod ubique instinctu naturae, non constitutione aliqua habetur, ut viri et feminae coniunctio, liberorum successio et educatio, communis omnium possession et omnium una libertas, acquisitio eorum, quae celo, terra marique capiuntur; item depositae rei vel commendatae pecuniae restitutio, violentiae per vim repulsio? 1. Nam hoc, aut si quid huic simile est, numquam iniustum, sed naturale equumque habetur.*" See also S. Pinckaers, *The Sources of Christian Ethics* (Edinburg 2001) 407: "To sum up, we can distinguish five natural inclinations: 1. The inclination to the good; 2. The inclination to self-preservation; 3. The inclination to sexual union and the rearing of offspring; 4. The inclination to the knowledge of truth; 5. The inclination to live in society. These inclinations, serving as principles for the practical reason, were comparable to the first principles of speculative reason. According to St. Thomas they were self-evident to all human beings, before any research and formulation had taken place; they were known intuitively, as it were. They served as premises, on which all reasoning and questionings about human good were based."

<sup>108</sup> *Decretum Gratiani*, D. 13 (*Dictum Gratiani, I Pars*): "*Item adversus naturale ius nulla dispensatio admittitur: nisi forte duo mala ita urgeant, ut alterum eorum necesse sit eligi.*" *Ivi*, c. 1. D. 13 (*Minus malum de duobus est eligendum*).

## ***Divine Law and Natural Law***

Law is a written norm while custom is a non-written norm. Law can be divine and human in nature: divine law has nature as its foundation while human law is founded on customs and practices of the peoples. Divine law is an expression of what is in conformity or against divine command while human law is an expression of what is just and unjust. Law must not only be just, but it must also be honest, doable in accordance with nature and with the customs and practices of the human society that should observe them.

In regard to its constitutionality, no human law may prevail against natural law; neither ecclesiastical nor civil constitution.<sup>109</sup> No customary law may prevail against natural law because no custom may ever prevail over sound reason. In fact, natural law is considered “*none other than the eternal reason of the Creator and Ruler of the universe.*”<sup>110</sup> As a consequence, whatever norm is introduced against natural law, may it be through an enactment of human authority or through a customary practice, will necessary be considered deprived of force and effect.<sup>111</sup>

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<sup>109</sup> Cf. John Paul II, *Discorso del Santo Padre al Giubileo dei Governanti e dei Parlamentari*, (November 4, 2000): “*Proprio a questo si intende alludere quando si afferma che la legge positiva non può contraddire la legge naturale null’altro essendo quest’ultima se non l’indicazione delle norme prime ed essenziali che regolano la vita morale, e quindi di quelli che sono i caratteri, le esigenze profonde e i valori più alti della persona umana.*” in [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/documents/hf\\_jp-ii\\_spe\\_20001104\\_jubil-parlgov\\_it.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/documents/hf_jp-ii_spe_20001104_jubil-parlgov_it.html). See *Decretum Gratiani*, c. 11. D. 9: “*Constitutiones ergo vel ecclesiasticae vel saeculares, si naturali iuri contrariae probantur, penitus sunt excludendae.*”

<sup>110</sup> Encyclical Letter *Libertas Praestantissimum* (June 20, 1888): *Leonis XIII P.M. Acta*, VIII, Romae 1889, 219: *Veritatis splendor*, 44: “It follows that the natural law is *itself the eternal law*, implanted in beings endowed with reason, and inclining them towards their right action and end; it is none other than the eternal reason of the Creator and Ruler of the universe”. Cf. *Decretum Gratiani*, c. 6. D. 8.

<sup>111</sup> *Decretum Gratiani*, c. 1. D. 8 (*Dictum Gratiani*): “*Quaecumque enim vel moribus recepta sunt, vel scriptis comprehensa, si naturali iuri fuerint adversa, vana et irrita sunt habenda.*” Cf. Pius XII, *Alloc., Con vivo compiacimento*, cited by F. Favara, *De iure naturali in doctrina Pii Papae XII* (Roma 1966) 65: “*La volontà ordinatrice del Creatore si manifesta mediante il comandamento moral*



If divine positive law cannot go against man, neither human positive law can do so. The reason is because God cannot act against the nature of man whom he created to his own image and likeness; likewise man can in no way act against his very nature, otherwise it will lead to self-destruction. Thus, human nature is the limitation of every divine and human positive law. This limit is set by the very nature of man and of the created things and thereby considered as grounded in the natural law. The created world is the work of God, so nature inasmuch as it is a reality coming from God possesses good in itself; it expresses the order set by God and as such is an expression of the same eternal law – unwritten – that governs the universe.<sup>112</sup>

The constitutionality of the divine positive law and human positive law cannot contradict and oppose the constitutionality of natural law because their *raison d'être* are grounded on the necessity of "interpretation" and "positivization" of the natural law in view of the "being and becoming" of man in all the stages of his history (biological, social and religious).<sup>113</sup>

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*di Dio iscritto nella natura e nella rivelazione, come mediante il precetto o la legge della autorità umana nella famiglia, nello Stato e nella Chiesa. Se l'attività umana si regola e si dirige secondo quelle norme, essa rimane per se stessa in armonia con l'ordine universal voluto dal Creatore. In ciò trova la sua risposta la questione del diritto vero e falso."*

<sup>112</sup> Cf. *Veritatis Splendor*, 43: "The Second Vatican Council points out that the "supreme rule of life is the divine law itself, the eternal, objective and universal law by which God out of his wisdom and love arranges, directs and governs the whole world and the paths of the human community. God has enabled man to share in this divine law, and hence man is able under the gentle guidance of God's providence increasingly to recognize the unchanging truth."

<sup>113</sup> Cf. Pius XII, *Alloc.*, *Con vivo compiacimento*, cited by F. Favara, *De iure naturali in doctrina Pii Papae XII* (Roma 1966) 66: "L'ordine morale é essenzialmente fondato in Dio, nella sua volontà, nella sua santità, nel suo essere. Anche la più profonda o più sottile scienza del diritto non potrebbe additare altro criterio per distinguere le leggi ingiuste dalle giuste, il semplice diritto legale dal diritto vero, che quello percepibile già col solo lume della ragione dalla natura delle cose e dell'uomo stesso, quello della legge scritta dal Creatore nel cuore dell'uomo (cf. Rom. 2:14-15) ed espressamente confermata dalla rivelazione. Se il diritto e la scienza giuridica non vogliono rinunciare alla sola guida capace di mantenerli nel retto cammino, debbono riconoscere gli obblighi etici come norme oggettive valide anche per l'ordine giuridico."

### ***Natural law as the foundation of human rights and duties***

The human rights and duties that immediately and simultaneously arise from the very nature of man are universal, inviolable and inalienable.<sup>114</sup> These rights and duties that are ascribable to man as human person are placed in an order of unchangeable and reciprocal correlation. They are grounded in the natural law that confers rights to man on one hand, while imposes duties on the other hand.<sup>115</sup>

"We need to emphasize that they should not be understood in a purely subjective sense, as the individual's defence against the encroachment of others and of society. Rather, they should be seen objectively as rights belonging to everyone. They call forth each one's respect and benevolence in keeping with the virtue of justice, which is a firm determination to give everyone their due. Natural law, like the virtue of justice, is primarily oriented to others, while always including the agent who is also a member of society. This is why rights and duties go together."<sup>116</sup>

In the realization of juridical undertaking of man, every subjective natural right demands a correlative natural duty. In fact, John XXIII asserted that in human society "every natural right in a person is inseparably connected with a particular duty of other persons, i.e., the duty of acknowledging and respecting the right in question. In reality, every fundamental right of a person derives its indestructible moral force from the natural law, which in conferring it, imposes a corresponding duty".<sup>117</sup> As a consequence "of that juridical order willed by God, man has his own inalienable right to juridical security. To him is assigned a certain, well-defined sphere of law, immune from arbitrary attack."<sup>118</sup>

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<sup>114</sup> *Pacem in Terris*, 9.

<sup>115</sup> Cf. S. Pinckaers, *The sources of Christian Ethics* (Edinburgh 2001) 297: "Natural law is the foundation of human rights, as it roots them in our personal nature. Thus these rights are, in their source, universal and inalienable.

<sup>116</sup> *Ivi*, 453-454.

<sup>117</sup> *Pacem in Terris*, 30.

<sup>118</sup> *Pacem in Terris*, 27. Cf. Pius XII's broadcast message, Christmas 1942, AAS 35 (1943) 21.

In this context, natural law is considered neither as an organized body of norms governing partly or entirely the most important of human behavior, nor a juridical order of non-existing but possible universal society of mankind, but it is certainly a universal order of justice among men.<sup>119</sup>

#### 4. Natural Law: Foundation of the Positive Law of Human Constitution

Mankind is fundamentally governed by the natural law through the positive human law based on the customs and practices of the peoples. Every law of human constitution, insofar as constituted by the will of man, must occupy the place that natural and divine positive law assign to it. Regarding this limit, the civil law (law of human constitution), governs the life of the civil society as such, and the canon law (law of human constitution) governs the life of the ecclesial society as divine and human society.

Civil law is constituted by the law of single nation (state law) and by the law of peoples (international law). The state law constitutes the law of single nation while the law of the peoples (international law) is constituted by norms accepted freely by the peoples and nations.

Canon law, as law of human constitution, is constituted by norms of human ecclesiastical constitution which govern the life of the ecclesial society. Canon law is constituted by canons (canons = rule) that are given by the human authority of the Church.<sup>120</sup>

The civil and canon law, inasmuch as they are law of human constitutions, are grounded on the human and social activities of man, respectively, in the civil society and in the ecclesial

<sup>119</sup> Cf. S. Lener, *Il concetto di diritto e il diritto naturale*, in *Civiltà Cattolica* 131/3130 (1980) 323-341.

<sup>120</sup> Cf. *Decretum Gratiani*, c. 2. D. 3. (*Dictum Gratiani*, II Pars): "*Porro Canonum alii sunt decreta Pontificum, alii statute conciliorum. Conciliorum vero alia sunt universalia, alia provincialia. Provincialium alia celebratur auctoritate Romani Pontificis, praesente videlicet legato sanctae Romanae Ecclesiae, alia vero auctoritate patriarcharum, vel primatum, vel metropolitanorum eiusdem provinciae. Haec quidem de generalibus regulis intelligenda sunt.*" See also G. Falchi, *Fragmenta Iuris Romani Canonici* (Roma 1998) 243.

society. The laws governing human and social relationships that flow from the nature of man are binding because they have foundation in the natural law. The divine constitutionality of natural law derives from the fact that it is an expression of the eternal law of God.<sup>121</sup> In virtue of this intrinsic reality, the law of human constitution cannot prevail on the law of divine constitution;<sup>122</sup> neither civil law can prevail on canon law.<sup>123</sup>

With the distinction between law of divine constitution and law of human constitution, methodology used by Gratian, it is easier to lay the basis for a scientific and juridical evaluation of the concept of natural law as divine constitution and of the positive law as human constitution.

## 5. Divine and human constitutionality of Canon Law

Canon law is divine-human constitution insofar as it is Work of God and work of men (Church hierarchy). The constitutive law of the Church is work of God (divine constitution); the actualization of the constitutive law of the Church is the work of man (human constitution).

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<sup>121</sup> Cf. R. Pizzorni, *Diritto, etica e religione* (Bologna 2006) 175: "Cost tutte le leggi umano-positive, in quanto sono veri leggi, derivano dalla legge naturale, e anch'esse, per mezzo della stessa legge naturale, discendono, come da prima sorgente, dalle legge eterna di Dio."

<sup>122</sup> Cf. *Inter mirifica*, 6: "Since the mounting controversies in this area frequently take their rise from false teachings about ethics and esthetics, the Council proclaims that all must hold to the absolute primacy of the objective moral order, that is, this order by itself surpasses and fittingly coordinates all other spheres of human affairs – the arts not excepted – even though they be endowed with notable dignity." See also: *Pacem in terris*, 43; *Gaudium et Spes*, 51; *Apostolica Actuositatem*, 51.

<sup>123</sup> *Decretum Gratiani*, c. 1, D. 10 (Dictum Gratiani): "§2. *Non quod imperatorum leges (quibus saepe ecclesia utitur contra haereticos, saepe contra tyrannos atque contra pravos quosque defenditur) dicamus penitus renuntiandas, sed quod eas evangelicis, apostolicis atque canonicis decretis (quibus postponendae sunt) non posse inferre praeiudicium asseramus.*" Cf. AA. VV., *Il Diritto nel mistero della Chiesa* (Roma 1988) 40: "L'ordinamento giuridico, nei suoi dettati normativi, soggiace sempre all'istanza etica. Infatti, la morale costituisce il fondamento insostituibile sul quale poggia l'attuazione dello stesso diritto."

The human constituent element of canon law springs forth from the divine constituent element and the former actualizes the latter in view of the social development of the Church in time and space. Therefore, there are two constituent elements: divine and human.

A definition of canon law will be complete taking into consideration its twofold constitutionality. A definition of this kind is given by F.X. Wernz: "*Complexus legume sive a Deo ab ecclesiastica auctoritate latorum, quibus Ecclesiae catholica ordinatur.*"<sup>124</sup> Canon law, according to Gratian's definition, is a composite of laws given by God and by the Church. It is a matter of acknowledging the two constituent elements: the active element of its divine constitution and the active element of its human constitution (ecclesiastical law). Canon law, in reality, does not derive its foundation from a "pre-constitution" elaborated by the Church, but proceeds from the "constitution" of the Church as willed by the Saviour; the Church should accept herself as Christ instituted it: a social unit and sacrament of salvation.<sup>125</sup>

The Church as a community of faithful has Christ as the Head and *qua talis*, the first and supreme legislator of the ecclesial society. Christ instituted the Church on the foundation of the Apostles. In the constitution of the first Christian communities, the Apostles' operative power enjoyed the assistance of the Spirit of the Lord. The decisions transmitted through pastoral letters possessed the gift of infallibility for the fact that they expressed the Word of God. Therefore, aside from the divine law of the Gospel there is also a divine apostolic law. The provisions enacted by the Apostles as pastors of the Church are provision of divine nature, *i.e.*, divine constitution. However, with the death of the last Apostle that coincides to the end of the so-called public revelation, the succeeding provisions enacted by the successors of the Apostles intended to translate in reality the gift of Faith are considered to be human ecclesiastical law.

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<sup>124</sup> F.X. Wernz, *Ius Decretalium*, 1 (Roma 1899) n. 46; Wernz-Vidal, *Ius canonicum*, 1, (Roma 1952) 68-69.

<sup>125</sup> AA. VV., *Il Diritto nel mistero della Chiesa* (Roma 1988) 109-112.

## Conclusion

Natural law is an inner law emanating from the Eternal law. It is the primary work of God, the Creator, who has created man to share in his image and likeness in our spiritual and rational nature. The contents of natural law have their source immediately in God and in our human nature. This constitutes the divine origin of natural law. Its divine constitutionality should always be the basis for any juridical construction. In any field of undertaking and human enterprise, there is a need to recognize the mysterious guidance of faith as the ground and apex of every scientific construction.<sup>126</sup> There is a need to harmonize faith and science.<sup>127</sup>

Every construction of civil and canon law that put asides the divine constitutionality of natural law is similar to a construction on the sand, *i.e.*, deprived of a solid groundwork and vulnerable to attack of every kind.

Every rational being personifies in himself the eternal reason, motivating him to comply with the eternal divine law given at the moment of creation.<sup>128</sup> The natural law "is nothing other than the light of understanding infused in us by God, whereby we understand what must be done and what must be avoided."<sup>129</sup>

The precept of "*do unto others what you would like others done unto you and do not do to others what you would not like*

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<sup>126</sup> Cf. S. Pinckaers, *The sources of Christian Ethics* (Edinburg 2001) 297: "In the light of faith and Christian experience, natural law will be affirmed, strengthened, deepened and better understood. It will enjoy and exact, supple and faithful harmony with the action of grace in the human person and will continue to provide a basis for mutual understanding and collaboration with those who do not share the same faith."

<sup>127</sup> John Paul II, *Fides et Ratio*, 9: "Philosophy and the sciences function within the order of natural reason; while faith, enlightened and guided by the Spirit, recognizes in the message of salvation the "fullness of grace and truth" which God has willed to reveal in history and definitively through his Son, Jesus Christ."

<sup>128</sup> *Veritatis Splendor*, 40: "God gave this light and this law to man at creation".

<sup>129</sup> *Ivi.*

*others do unto you*" is the summary of the Law and the Gospel. With this precept, God entrusts to man the "*lex-homo*". This law derives from the initial will of God in the creation and it is realized in the juridical interpersonal relationship of man with another; the justice that one deserves is the same justice that another should enjoy.

The categorical imperatives of "*lex-homo*" grasped only by human intuition and reason in the ancient world finds its fullest expression in the divine positivization of the Old and New Covenant. Man as person becomes the center of all legal systems. There is one valid legal order whose center is occupied by human person: *lex-homo*. The civil and canon law are inserted in this legal order like a concentric circles harmonizing one another without overrunning and overlapping.

The ultimate source of canon law is God, the Divine Legislator of Eternal law, whose will is manifested respectively in God's act of creation through the very nature of things<sup>130</sup> (natural divine law), and in God's Revelation (positive divine law). Both are contained in the Sacred Scriptures and in the Sacred Tradition. Positive divine law cannot contradict natural law because it is the human expression of God's eternal law; it rather confirms it and renders it more definite. The Church accepts and considers both as supreme binding laws which it can only interpret but cannot modify; however, it does not discover natural law by speculative reflection; it receives it, with positive divine law, from God through the Revealed truth and Sacred Tradition. The Church through Magisterium interprets the natural law and sometimes it may codify its content because she is the mother, teacher and human legislator of Divine will. Indeed, Pius XII asserts this fact affirming that "the Redeemer has placed both the law written in the heart, that is, natural law and the truths and the precepts of

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<sup>130</sup> Cf. F. Favara, *De iure naturali in doctrina Pii Papae XII* (Roma 1966) 157: "*Fundamentum iuris naturalis sunt, ad mentem Pii XII, natura hominum e rerum et simul earum exigentiae et relationes; id est entia omnia, sive rationalia sive physica sive moralia, prout omnia participant ad ordinem universale.*"

Divine Revelation as moral treasure of the humanity in the hands of His Church.”<sup>131</sup>

John Paul II, teaches that natural law is itself the eternal law, implanted in beings endowed with reason, and inclining them towards their right action and end; it is none other than the eternal reason of the Creator and Ruler of the universe.

As regards Canon law, the sphere of its human constitutionality implies a defined limit in establishing the manners in which the provisions set by the divine apostolic constitution can be actualized. As a social entity, the Church has the duty to conform herself to the will of the Divine Founder, according to the teaching of the Apostles and their successors under the guidance of the Holy Spirit. □

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<sup>131</sup> Cf. Pius XII, Radio message, *La famiglia é la culla*, cited by F. Favara, *De ure naturali in doctrina Pii Papae XII* (Roma 1966) 146: “*Ambedue, sia la legge scritta nel cuore, ossia la legge naturale, sia la verità e i precetti della rivelazione soprannaturale, il Redentore Gesù ha rimesso, come tesoro morale dell’umanità nelle mani della sua Chiesa.*”